



Neutral Citation Number: [2023] EWHC 1623 (KB)

Claim No: F90MA228

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**MANCHESTER DISTRICT REGISTRY**

1 Bridge Street  
Manchester  
M60 9DJ  
Friday, 30<sup>th</sup> June 2023

**Before:**  
**MR JUSTICE FORDHAM**

**Between :**  
**MARK ANTHONY MCGHEE,**  
**THE EXECUTOR OF THE ESTATE OF UXA, NOW DECEASED**

**Claimant**

**- and -**  
**MERSEY CARE NHS FOUNDATION TRUST**  
**(FORMERLY KNOWN AS NORTH WEST**  
**BOROUGHs HEALTHCARE**  
**NHS FOUNDATION TRUST)**

**Defendant**

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**Mark McGhee (of R James Hutcheon Solicitors) as the Claimant**  
**John Wafer (of Hill Dickinson) for the Defendant**

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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

**MR JUSTICE FORDHAM:**

Introduction

1. This judgment is a sequel to the judgment I handed down on 21 December 2021 in UXA v Merseycare NHS Foundation Trust [2021] EWHC 3455 (QB) [2022] 4 WLR 30. In that judgment, I explained the circumstances in which I made an earlier Order (15.10.21) containing declarations, by consent, that the Defendant had acted in breach of UXA's human rights. I also explained why I had decided to make a further Order (21.12.21) giving the parties permission to use certain documents other than for the purposes of the proceedings herein, including disclosure to third parties (including media organisations).
2. Those documents were: (i) UXA's Opening Submissions and Scott Schedule, dated 27<sup>th</sup> September 2021; (ii) UXA's Further Submissions, dated 11<sup>th</sup> October 2021; (iii) The Defendant's Skeleton Argument, dated 29<sup>th</sup> September 2021; (iv) The Defendant's Note on the Draft Order, dated 11<sup>th</sup> October 2021; (v) The Agreed Joint Psychiatric Statement of the parties' expert Consultant Psychiatrists, Dr Daly and Dr Adshead, dated 28<sup>th</sup> May 2021; (vi) The judgment in default entered by Master Cook on 12<sup>th</sup> April 2019; (vii) The Defendant's Admissions dated 31<sup>st</sup> May 2019; and (viii) the NICHE Report, of an *Independent investigation into care and treatment of a service user in Wigan*, dated 17<sup>th</sup> March 2017, in the anonymised form in which it appeared in the Hearing Bundle (excluding the Appendices).

The New Order

3. The purpose of this judgment is to explain why and in what circumstances I have now, by consent of the parties, made a further Order (the "New Order") in these proceedings. That was a further judicial act by way of determination on the papers. The Order was sought by virtue of an Application Notice dated 21.4.23, supported by a Witness Statement of that same date. I decided to deal with it on the papers. Nobody sought a hearing and I decided I did not need to convene one. I am satisfied, as before, that it is appropriate in the interests of open justice to give a reasoned ruling, in the public domain, to explain what I have ordered and why.

Notice

4. The parties have satisfied me that they considered whether any further party or person should be notified and given an opportunity to make representations, before the New Order was made. Having received the Application (21.4.23), I raised with the parties a question about this. That was because of a point which I had seen made in earlier correspondence. The question concerned notification to the Defendant's Chief Executive and Executive Director of Nursing. By letter dated 5 June 2023 I was informed that notice had been given to both of these individuals, with an opportunity to comment, and no representations had been forthcoming. I am content that this aspect has been properly addressed and that no further step is needed.

Context: the SAR

5. Section 43 of the Care Act 2014 obliges each local authority to establish a Safeguarding Adults Board (“SAB”) for its area. Section 44, entitled “Safeguarding adults review”, then provides as follows:

*(1) An SAB must arrange for there to be a review of a case involving an adult in its area with needs for care and support (whether or not the local authority has been meeting any of those needs) if— (a) there is reasonable cause for concern about how the SAB, members of it or other persons with relevant functions worked together to safeguard the adult, and (b) condition 1 or 2 is met. (2) Condition 1 is met if— (a) the adult has died, and (b) the SAB knows or suspects that the death resulted from abuse or neglect (whether or not it knew about or suspected the abuse or neglect before the adult died). (3) Condition 2 is met if—(a) the adult is still alive, and (b) the SAB knows or suspects that the adult has experienced serious abuse or neglect. (4) An SAB may arrange for there to be a review of any other case involving an adult in its area with needs for care and support (whether or not the local authority has been meeting any of those needs). (5) Each member of the SAB must cooperate in and contribute to the carrying out of a review under this section with a view to— (a) identifying the lessons to be learnt from the adult's case, and (b) applying those lessons to future cases.*

6. Section 44(5) of the 2014 Act reflects the importance and significance of a SAR. It imposes on each member of the SAB a duty to “cooperate in and contribute to the carrying out of a review”. It then sets out the two functions of the review: to identify the lessons to be learnt from the adult’s case; and to apply those lessons to future cases.
7. What happened in the present case is that Wigan Adult Safeguarding Board (“WASB”) had commissioned a Safeguarding Adult Review (“SAR”) pursuant to section 44 of the 2014 Act. That is an SAR into the care and support of UXA, she having been a person who before her death had experienced serious abuse and neglect. The view of WSAB was, and is, that particularly considering the Order made by the Court on 15th October 2021, the Board is obliged pursuant to section 44 to undertake a SAR into the relevant circumstances of the care and support that was provided to UXA.

#### Substitution of Claimant

8. The New Order directs that the title to the proceedings be amended to substitute Mr McGhee as the Claimant to the proceedings, in his capacity as the Executor of the Estate of UXA. UXA died on 20th October 2022, appointing Mr McGhee in her Will as the Executor of her Estate. This is sought in the Application for reasons given in the supporting Witness Statement. The Defendant consents. I am satisfied, in all the circumstances, that this part of the Order is necessary and appropriate.

#### Permission to Use Further Documents

9. The New Order then grants the parties permission to use certain further specified documents for purposes other than the proceedings. There is consent between the parties, subject to the Court being satisfied, as I am.
10. As the New Order records, I was satisfied that the permission is justified as appropriate and necessary in the exercise of the Court’s inherent jurisdiction and having regard to the open justice principle and in the interests of justice.
11. The New Order grants the parties “permission to use the following documents other than for the purposes of the proceedings herein, including to disclose the same to third parties including media Organisations and in particular, WASB as part of its ongoing

SAR”: (1) The medical reports of Dr Oscar Daly, Consultant Psychiatrist, included within the Trial Bundle, dated 24/11/16, 24/2/17, 10/7/17, 16/11/17, 16/9/18, 17/9/18, 22/6/19, 16/11/20, 10/3/21 and 22/9/21. (2) The medical reports prepared by Dr Peter Higson, Chartered Clinical Psychologist contained within the Trial Bundle, dated 12/7/16, 14/9/16, 3/3/17, 30/5/17, 15/11/17, 4/4/19, 20/11/20, 12/3/21 and 15/9/20. (3) The medical reports prepared by Professor Kevin Gournay, Psychiatric Nursing Care expert, contained within the Trial Bundle dated 27/11/20, 25/3/21 and 21/9/21. (4) The medical reports prepared by Dr Gwen Adshead, Consultant Psychiatrist dated 27/1/18, 6/9/19, 14/5/20 and 18/3/21. (5) The Third Witness Statement of UXA as amended and served on 18/8/21 contained within the Trial Bundle.

12. I turn to further outline the relevant circumstances which led to the New Order and my being satisfied that it was appropriate and necessary. The circumstances were described in detail in Mr McGhee’s April 2023 Witness Statement. I take the substance of the remaining paragraphs of this judgment from that source. Their accuracy is agreed between the parties.
13. At the start of the SAR process, the WSAB had commissioned an independent consultancy organisation called Safeguarding Circle to take forward the investigation. UXA herself had been consulted. She was afforded the opportunity to speak to the main Safeguarding Consultants, and agreed with the appointment. There had been various meetings with UXA and her representatives. Significant progress has been made in relation to the SAR, including a detailed draft Early Analysis Report by way of a “high-level overview” of documentation, relying heavily on the documents that were released by the Court pursuant to the Order made on 21 December 2021. The wide-ranging and important nature and purpose of the SAR is reflected in the breadth of the key lines of enquiry identified in the Early Analysis Report.
14. The view of UXA’s advisers and of Safeguarding Circle was, and is, that WASB cannot and will not be able properly to discharge its statutory duties pursuant to section 44 of the Care Act 2014, absent access to further critical documents contained within the Trial Bundle which had been prepared for the purposes of the proceedings. That included all of the expert medical reports prepared within the proceedings and the primary Witness Statement of UXA, all included within the Trial Bundle.
15. Throughout Mr McGhee’s involvement with UXA, during the claim and even more so after the making of the Order on 15th October 2021, UXA was adamant that her experience could and should be used as a focal point to review and learn lessons from her care, so as to improve processes and procedures and ultimately, to hopefully prevent any reoccurrence of what happened to her happening to any other service user or users. UXA was passionate about trying to achieve such a goal. This was why, to UXA, the SAR that WASB decided to undertake at the conclusion of the litigation, was so important.
16. The best record now available that goes to UXA’s experiences, as set out in her own words, is that which is set out within the Witness Statement prepared for and served within the proceedings.
17. Dr Daly and Professor Gournay have consented to the disclosure of their reports. Dr Higson died, tragically and unexpectedly, in early January 2023. However, before Dr Higson’s death, when asked by Mr McGhee about whether or not he consented to the

disclosure and release of his reports, he responded immediately, confirming that he had no objection to the disclosure and release of his reports and indeed, welcomed such a course of action, given the importance for him of UXA's case and the wider issues of general application and importance that it raises.

18. Dr Adshead is the Defendant's expert and no objection has been raised by the Defendant to the release of his reports. In my Order of 21st December 2021, I granted permission to disclose the agreed Joint Psychiatric Statement of the parties' expert Consultant Psychiatrists, Dr Daly and Dr Adshead, dated 28th May 2021, to third parties. However, it has proved very difficult for all and any relevant third parties to fully understand the opinions expressed within the agreed Joint Statement without being able to review and consider the various reports prepared by both Psychiatrists.
19. The reports prepared by Professor Gournay and Dr Higson on UXA within the proceedings fall into two categories. Dr Higson's report of 20th November 2020 and Professor Gournay's report of 21st November 2020, deal solely with matters going to breach of duty; both of which are considered to be of critical relevance and importance to most if not all of the key lines of enquiry for the Review. The other reports prepared by both experts go more to matters of UXA's situation and condition, both past, current and future at the time the reports were prepared. Again, those reports are considered to be of relevance and assistance to the Review, as touching on identified lines of enquiry.
20. Until UXA's death, her firm instructions to her representatives and to Safeguarding Circle were to take whatever steps were and are necessary to obtain the Court's approval and permission to release and disclose the categories of documents identified above. Before her death, UXA executed the Will which named Mr McGhee personally as the sole Executor of her Estate. Just before UXA's death she left specific instruction to Mr McGhee and her other representatives to continue their ongoing work as part of the SAR process, as one of her expressed final wishes.
21. Tragically, UXA took her own life 20 October 2022. Quite properly, there was a pause in the statutory review process after UXA's death and cremation. After the review process has recommenced, there were communications as between Safeguarding Circle, the Safeguarding Board, Mr McGhee and UXA's other representatives and the representatives from the Defendant Trust including Mr John Wafer, the Solicitor at Hill Dickinson with overall conduct of these proceedings. All who were engaged in that ongoing process now agreed that the categories of documents that formed the subject matter of this Application are and will be crucial to the finalisation of WSAB's SAR.
22. There were discussions between the parties as to the best way forward. These had focused upon the nature and ambit of the disclosure for which the Court should be asked to grant permission. Although the initial view of the Defendant Trust was that the Court should only be asked to grant permission for disclosure of the documents requested to the WSAB, on further review and discussion the Defendant accepted that if the Court was and is to grant permission for disclosure of these documents, such permission should be given on the same terms as set out within my Order made on 21st December 2021. Among the reasons for this was that, if the Court did grant permission to disclose these documents, it should do so in accordance with the principles of open justice, as set out in my Judgment of 21st December 2021. Another was that, the more the parties considered the ramifications of allowing disclosure solely to WSAB of the relevant documents, the more problems began to arise. These included not being able to

share the contents of the documents to the various stakeholders involved in the SAR process and also not being able to refer to or rely upon the contents of some of the documents within WSAB's final published Report.

23. In that context, the Defendant was agreeable in principle to an Order in similar terms to the Order made on 21 December 2021, for the disclosure of the additional documents required by WSAB from the Trial Bundle, subject to the Court's approval. Correspondence ensued, including correspondence with the Court, culminating in the Application and draft Order, which all relevant and interested parties had approved, so that the Application was made on a fully consensual and agreed basis.
24. It was in these circumstances, and for these reasons, that I made the Order in the terms sought.